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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/700,410

11/03/2003

Wilbur H. Highleyman

9203-21U4

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05/12/2006

AKIN GUMP STRAUSS HAUER & FELD L.L.P.
ONE COMMERCE SQUARE
2005 MARKET STREET, SUITE 2200
PHILADELPHIA, PA 19103

EXAMINER

ROBINSON, GRETA LEE

ART UNIT

PAPER NUMBER

2168

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,410

Applicant(s)

HIGHLEYMAN ET AL.

Examiner

Greta L. Robinson

Art Unit

2168

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/28/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-32 are pending in the present application.
2. Claims 1, 2, 8, 16 and 17 have been amended; and new claims 25-32 have been added.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on September 28, 2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner, note attached copy of form PTO 1449.

Drawings

4. The drawings were received on March 3, 2006. These drawings are acceptable.

Claim Objections

5. Applicant is advised that should claims 16-28 be found allowable, claims 1-15 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding independent claim 1, note step (a) recites “a **plurality of nodes**, each node including **one or more processors**”; while step (c) recites “ ... the availability of the split processing system being greater than the availability of an unsplit system wherein **all of the processors are located at a single node**”. It is unclear as to how all of the processors can be located at a single node if there are a plurality of nodes wherein each node contains one or more processors. The connection between the claimed elements is not clear. Independent claim 16 is substantially similar in limitation to claim 1; and is therefore rejected under the same rationale. Claims 2-15 and 17-32 are rejected based on dependency.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1, 13-15, 16 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leymann et al. US Patent 6,415,297 B1.

Regarding claim 1, Leymann et al. teaches a split processing system [note: Figure 4] comprising:

(a) a plurality of nodes, each node including one or more processors, each node having a specific number of failure modes [note: Figures 1 and 3; column 11 lines 15-16; column 11 lines 26-34 and 53-60; column 12 lines 4-9]; and

(b) a communication network that allows the one or more processors at each of the nodes to cooperate with each other [note: Figure 1, Figure 3, column 11 lines 53-61]; and

(c) means to allow one or more of the nodes to take over processing capacity of a node that becomes lost [note: col. 3 lines 40-58; col. 7 lines 15-33; col. 7 line 60 through col. 8 line 2; col. 10 line 63 through col. 11 line 49].

Although Leymann et al. teaches the invention as cited they do not explicitly teach that the availability of the split processing system being greater than the availability of an unsplit system. Leymann et al. teaches an audit trail that contains a record for each event such as start or termination of a process or an activity to capture the history. Events of any type occurring are candidates for the audit trail [see: column 8 lines 47-65]. Leymann et al. also teaches that the performance of the system impacts can be minimized through splitting [note: column 10 lines 25-27, column 10 lines 61-65]. Leymann et al. teaches evaluation of all activity and considers failing conditions. All information is stored in the database [column 8 lines 32-46]. It would have been obvious to one of ordinary skill at the time of the invention to conclude that an unsplit system would have a higher failure number (i.e. unavailable) than a split system since Leymann et al. teaches performance impacts are decreased by the workflow system or split [note: column 10 lines 25-27] and that the system stores all activity types including start and end (i.e. recovery or failures).

10. Regarding claims 13-15, wherein at least some of the nodes are in different physical locations ... co-located ...about the same [note: Figure 3 and 4].

11. The limitations of claims 16 and 22-24 have been addressed above in the limitations of claims 1 and 13-15 except for the following: a processor subsystem including at least one processor; and an operating system [note: col. 9 lines 58-62]

column 9 lines 57-66; column 10 lines 63-67; column 11 lines 25-32; column 12 lines 4-9].

Response to Arguments

12. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection. In the response Applicant argued Leymann et al. does not necessarily increase system availability compared to an unsplit system. In response, the examiner respectfully disagrees. Note Leymann et al. teaches partitions provide maximum availability see col. 5 lines 5-9. Also the very nature of a parallel system as taught in Leymann et al. provides optimum availability. However, note new rejection supra under 35 USC 103(a) and 35 USC 112 second paragraph.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Maier et al. US Patent 5,625,815

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (571)272-4118. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim T. Vo can be reached on (571)272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/700,410
Art Unit: 2168

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GRETA ROBINSON
PRIMARY EXAMINER

Greta Robinson
Primary Examiner
May 10, 2006